

**Statement Before the Subcommittee on Terrorism,
Nonproliferation and Trade of the House Committee on
Foreign Affairs**

A Strategic and Economic Review of Aerospace Exports

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Mr. Chairman, Congressman Royce, and Members of the Subcommittee, I appreciate the opportunity to appear before you this afternoon as part of this distinguished panel to offer my views on the strategic and economic issues associated with U.S. aerospace exports. I focus this afternoon on export controls more than export promotion, because that is where we have directed our analyses in the past few years. I would note that my statement draws on the export control studies of the Center for Strategic and International Studies but that the statements and conclusions are my own and do not necessarily represent the views of CSIS.

Administration Review

As you know, Mr. Chairman, in August the Obama Administration announced “a broad-based interagency process for reviewing the overall U. S. export control system, including both the dual-use and defense trade processes.” This is a worthy initiative and one applauded by all involved in export promotion and controls. It is particularly important that such an effort be initiated at the start of an administration, because past experience shows that progress in improving export control regimes is slow-moving.

What is needed, of course, is action, not words – within the Executive Branch, with the Congress, with our allies and partners, and with industry. Only by working together better than we have in the past can we expect to make progress.

CSIS Studies

At CSIS, we have called for and supported such efforts in the past. Beginning with our seminal study led by Dr. John Hamre in 2001, “Technology and Security in the Twenty-First Century,” we have offered recommendations for improvement.

More recently, our study on the “Health of the U. S. Space Industrial Base and the Impact of Export Controls” was released on February 18, 2008, and is available at <http://csis.org/publication/health-us-space-industrial-base-and-impact-export-controls>.

On May 15, 2008, we released our briefing “Toward a U. S. Export Control and Technology Transfer System for the 21st Century” at a public event co-led by the Deputy Secretary of Defense and the Deputy Secretary of State. That briefing can be found at <http://csis.org/publication/toward-us-export-control-and-technology-transfer-system-21st-century>.

The briefing was the culmination of more than a year of working group meetings and sessions involving all of the key Executive Branch agencies and the congressional committees and staff.

Let me summarize the lessons we learned from those recent studies.

First, we learned that progress can come if agencies do a better job of working together. We found that the Departments of State, Commerce, and Defense benefit from a forum for dialogue and from an ability to raise and resolve issues at the staff level.

Second, we found that such progress is enhanced by strong, visible support at the level of the White House, Cabinet Secretaries, and Agency heads.

These are not new observations, Mr. Chairman, but it is important to reiterate them, because with the press of issues at the beginning of a new administration, they can be too easily relegated to the back burner.

Third, we found that the primary driver for export controls is national security, and the system properly tries to achieve the two goals of preventing our adversaries from accessing our technology while enabling technology interaction with our allies and partners. That said, we further found that there are at least three ways in which the current export control regimes may serve to undermine U.S. national security rather than strengthen it. This is a crucial finding, Mr. Chairman, and I want to expand on that.

National Security Concerns

One undermining effect is that the current regimes make it difficult to prioritize administration efforts. The regimes concentrate far too much effort and attention on controlling items that pose little threat and therefore are unable to identify and concentrate on the technology areas that pose the greatest threat and contain the most prominent vulnerabilities. With too few people to do everything, we cannot afford a situation in which we might succeed in controlling the spread of weapons in one region but fail to address larger global threats.

A second undermining effect serves to limit the U.S. ability to access the global innovation base and to operate interactively with our allies. Based on the flawed assumption that all new defense-related technologies are being created and developed in the U.S., our export control regimes continue to be structured in a way that makes both collaborative R&D and coalition operations harder to undertake. Meanwhile, the globalization of technology development and application means that many advanced capabilities are coming from other countries, and the primacy of the commercial market means that defense does not always have the cutting edge in areas like communications, electronics, microprocessing, software development, and optics. In addition, to handle the threats of the 21st century, the U.S. is finding it to be increasingly important to be able to operate with allies in a coordinated manner. Yet our system of controls continues to operate as if globalization has not occurred.

A third undermining effect arises as a direct result of the success of our existing control regimes. Nations that are unable to obtain technology from the U.S. are left with two choices: do without, or develop their own. Several have chosen to develop their own. Let me give you just one example: space launch and payloads. During the CSIS study on the U.S. space industrial base, representatives from more than one nation expressed gratitude to the U.S. for limiting export of U.S. space technology and in essence forcing them to develop their own indigenous satellite

launch capability. That may or may not be in U.S. interests, but it certainly was not a direct goal of U.S. policy.

System Characteristics

Concerns about the export control process can be addressed by a system that takes into account the undermining effects. In order to do so, we need an export control regime with the following characteristics:

- focuses on the most critical technologies
- recognizes that the U.S. no longer has a monopoly on new defense technology
- considers the secondary impact of restrictions that end up producing potentially undesirable competitors
- permits the U.S. defense industry to draw from commercial technology without penalizing commercial suppliers

These characteristics do carry some inherent risk, and the existing regime seems to put a premium on minimizing risk. Reducing risk at the technology export level can in fact produce an increase in overall national risk in the long run. Our system needs to focus on overall national risk.

European Union Directives

It is perhaps instructive to examine what steps the European Union is taking on defense technology and export controls. Two new directives were passed by the European Parliament this summer.

The first, Directive 2009/81/EC on defense and security procurement entered into force on August 21, 2009. The overarching objective of the directive is to open the fragmented EU defense market to EU-wide competition. The directive does not mandate an explicit European preference, and therefore U.S. defense companies would in theory be eligible to benefit from it. However, it does include a security-of-supply provision as a selection criterion for awarding contracts. In practice, this could mean that U.S. companies are put at a comparative disadvantage based on ITAR regulations, which could be judged negatively with regard to guaranteeing security of supply.

The second, Directive 2009/43/EC on simplifying the transfers of defense related products within the EU, addresses the issue of transfer of defense-related goods between EU member states by introducing a new standard of general and global licenses to govern such transfers. Within the EU, cross border transfers have traditionally required the issuance of individual export licenses, which restricted the free circulation of defense goods. At the same time, the bureaucratic burden and the associated delays and costs did not yield any tangible gains in safety, based on a zero per cent denial rate for transfers between EU member states. The new types of licenses would provide a pre-approved authorization framework by bundling certain categories of transfers in one single license. This system will introduce a greater level of predictability for transfers, satisfy security-of-supply concerns, reduce bureaucratic procedures, and consequently eliminate time and cost frictions for most intra-EU transfers.

U.S. companies and their European subsidiaries will probably not benefit from this directive due to the incompatibility of US export controls with the EU transfer directive. In fact the net effect might also be the creation of a comparative disadvantage for U.S. defense companies vis-à-vis their European peers.

Far more importantly, though, at the national security level, these directives could create and sustain conditions in Europe that would accelerate the development of defense technology to which the U.S. would not have access. They could create a pan-European defense market and make it easier for European companies to gain a critical mass in research funding and market share. This could in turn foster the development of new technology that is not subject to U.S. export controls and make it unpalatable for that technology to be incorporated into U.S. equipment (and then subject to U.S. restrictions). The directives could leave the U.S. without direct access to the latest defense technology. Were that to happen, the risks in my view would outweigh the benefits of the restrictions.

As of today, these new EU directives have not yet been implemented. It is unclear what their impact will be first on the overall international efforts to control the proliferation of technology and second on the technology available to U.S. subsidiaries of European firms and to the European subsidiaries of U.S. firms. However, there may still be time for the U.S. to engage with the EU on implementation, and I believe that such engagement would be welcome. The implementation of these directives bears close watching and analysis, and we at CSIS intend to do that.

Conclusion

Mr. Chairman and Congressman Royce, the time is right for improvements in the implementation of today's U.S. export control regimes. It is also time to consider updates to the enabling legislation, including the Export Administration Act and the Arms Export Control Act. At CSIS, we will continue to work on generating new ideas and on providing a forum for interaction across the Executive branch and between the Executive and Legislative branches. With that, I conclude my remarks and await your questions.